

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>NANCY DANGERFIELD,</b>	:	<b>Case No. 02-CV-782</b>
<b>Plaintiff,</b>	:	
	:	<b>JUDGE KATHLEEN M. O'MALLEY</b>
<b>v.</b>	:	
<b>COMMISSIONER OF SOCIAL SECURITY,</b>	:	<b><u>ORDER</u></b>
<b>Defendant.</b>	:	

Before the Court is Plaintiff Nancy Dangerfield's Motion for Attorney Fees under the Social Security Act. (Doc. 23.) The Commissioner did not file a response to the Motion. This matter was referred to Magistrate Judge David S. Perelman ("Judge Perelman") for preparation of a Report and Recommendation ("R&R"). On December 10, 2009, Judge Perelman filed his R&R, in which he recommended that:

plaintiff's counsel be granted an award of fees pursuant to 42 U.S.C. § 406(b) in the sum of \$4,271.25 from the statutory retention for fees from the plaintiff's award of past due benefits, with directions to pay over to the plaintiff the \$1,315.21 previously awarded pursuant to [the Equal Access to Justice Act ("EAJA")].

(Doc. 25.) Judge Perelman's R&R explained that failure by the Commissioner to object to the R&R within fourteen (14) days of receipt would result in waiver of any right to object. (*Id.*)

The Commissioner has not filed any objection to the R&R and "[f]ailure to object to an adverse magistrate's report and recommendation, after being advised of the consequences, constitutes a waiver of further appellate review." *See Smith v. Franklin*, 872 F.2d 1028 (6th Cir. 1989) (unpublished) (citing *Thomas v. Arn*, 474 U.S. 140 (1985)); *see also Javaherpour v. United States*, 315 Fed. Appx. 505, 508 (6th Cir. 2009) ("[A] party must file timely objections with the

district court to avoid waiving appellate review.” (citing *States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981))). Indeed:

In *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 471, 88 L. Ed. 2d 435 (1985), the United States Supreme Court specifically upheld [the Sixth Circuit’s] rule conditioning the right to appeal a district court’s order on the filing of specific objections to the magistrate’s report and recommendation. The Court noted that “the Sixth Circuit rule, by precluding appellate review of any issue not contained in objections, prevents a litigant from ‘sandbagging’ the district judge by failing to object and then appealing.” *Id.*

*Wilson v. McMacken*, 786 F.2d 216, 220 (6th Cir. 1986); see also *Branch v. Commissioner of Soc. Sec.*, No. 07cv26, 2009 U.S. Dist. LEXIS 114390, \*2-3 (N.D. Ohio Dec. 8, 2009)(granting the plaintiff’s request for attorney fees where the Commissioner failed to object to the R&R recommending an award of fees).

Because the Commissioner has not objected to any portion of Judge Perelman’s R&R recommending an award of fees, it is unnecessary to review this Motion further. The Court **GRANTS** Plaintiff’s unopposed Motion (Doc. 23) in the manner recommended by Judge Perelman and **ORDERS** the payment of fees to Plaintiff’s counsel in the amount of \$4,271.25 with directions to pay over to Plaintiff the amount of \$1,315.21, which was previously awarded pursuant to the EAJA in January 2004.

**IT IS SO ORDERED.**

s/Kathleen M. O’Malley  
**KATHLEEN McDONALD O’MALLEY**  
**UNITED STATES DISTRICT JUDGE**

**Dated: January 5, 2010**